

REMARKS

In this Amendment, the status of the claims is as follows: claims 1-30, 111 and 118 have been canceled; claims 31-75, 77-86, 88-98, 100-104, 106-108, 113-116 and 120-123 have been previously presented and claims 76, 87, 99, 105, 109, 110, 112, 117 and 119 have been amended. It is submitted that no new matter has been added by virtue of the amended claims, which are supported by the disclosure of the application as originally filed.

More specifically, support for amended claims 76, 87, 109, 110 and 117 is found in the instant specification, *inter alia*, at paragraph [0033] of the published application, Publication No. 2002 0006442.

Accordingly, claims 31-110, 112-117 and 119-123 are currently pending in the instant application.

The claims fulfill the requirements of 35 U.S.C. §112, second paragraph

Claims 76-116 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. According to the Examiner, it is unclear as to the location of the tonic modifier in the independent claims. It is submitted that claims 76, 87, 109, 110 and 117 as currently amended moot the rejection. Withdrawal of this rejection is thus respectfully requested.

Applicants acknowledge the Examiner's allowance of claims 31-75 and 117-123, as indicated on page 2 of the Office Action.

Information Disclosure Statement (IDS)

The Examiner states that the references cited on the PTO 1449 Form, which accompanied the IDS submitted on January 24, 2003 are not of record. (05/20/2004 Office Action, page 2).

Applicants have reviewed the IDS and the PTO 1449 Forms that were filed on January 24, 2003 in the instant application. Copies of the aforementioned IDS and the PTO 1449 Forms, as filed on January 24, 2003 in this divisional application, are submitted herewith for the Examiner's convenience. It is noted that the IDS as submitted on January 24, 2003 indicates on page 2 that the listed references were previously submitted in the parent application (i.e., U.S. Serial No. 09/376,487, filed August 18, 1999).

A review of the file of the parent application, U.S. Serial No. 09/376,487, shows that copies of a number of the same PTO 1449 Forms as were submitted in the instant divisional application were initialed, dated and returned to the Applicants by the Patent Office. Thus, it is observed that the Examiner had previously considered the listed references in the parent application. Copies of the initialed and dated PTO 1449 Forms from the IDS of parent application US Serial No. 09/376,487 are also included herewith for the Examiner's convenience.

According to MPEP § 609 III. A(2), information listed in an IDS is not required to be provided if: (1) the information was previously cited by, or submitted to, the Office in a prior application, provided that the prior application is properly identified in the IDS and is relied on for an earlier filing date under 35 U.S.C. § 120; and (2) the IDS submitted in the earlier application complies with 37 C.F.R. § 1.98(a)-(c). Since the Examiner initialed, dated and returned several of the PTO 1449 forms in the parent application, it is submitted that copies of these same listed references, that were previously considered, need not be re-submitted in the instant divisional application.

For one set of PTO 1449 Forms submitted in the January 24, 2003 IDS for the instant application, Applicants are filing currently herewith copies of the 347 listed U.S. parent references to be certain that the Examiner has considered these references in the instant divisional filing. The copies of these references are being hand delivered to the Examiner's Art Unit in the U.S. Patent and Trademark Office under separate cover, as a companion submission to this Amendment. The patent references submitted under separate cover are those listed in the yellow-highlighted copies of the PTO 1449 Forms, filed on January 24, 2003 in this application, which Applicants have provided as an enclosure with this Amendment.

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Accordingly, the Examiner is respectfully requested to initial and date all of the PTO 1449 Forms from the IDS submitted on January 24, 2003 in the instant divisional application, and to return a copy of all of the initialed and dated PTO 1449 Forms with the next PTO communication in this application.

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CONCLUSION

Applicants respectfully submit that the present application is now in condition for allowance. An action progressing this application to issue is courteously urged.

Should any additional fees be deemed to be properly assessable in this application for the timely consideration of this Amendment, or during the pendency of this application, the Commissioner is hereby authorized to charge any such additional fee(s), or to credit any overpayment, to Deposit Account No. **50-0311**; Reference No. **28069-504 DIV**; Customer No. **35437**.

If the Examiner is of the opinion that further discussion of the application would be helpful, the Examiner is hereby respectfully requested to telephone the applicants' undersigned representative at (212) 692-6742 and is assured of full cooperation in an effort to advance the prosecution of the instant application and claims to allowance.

Respectfully submitted,

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AND POPEO, P.C.

Date: November 19, 2004

By:



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